

EXHIBIT D

Excerpts from Transcript of Oral Argument

Rimini I, Nos. 16-16832, 16-16905
(9th Cir. July 13, 2017)

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1 IN THE UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT
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5 ORACLE USA INC., a Colorado)
6 corporation; ORACLE AMERICA,)
7 INC., a Delaware corporation;)
8 ORACLE INTERNATIONAL) Nos. 16-16832
9 CORPORATION, a California) 16-16905
10 corporation,
11)
12 Plaintiffs-Appellees,
13)
14 vs.
15)
16 RIMINI STREET, INC., a)
17 Nevada corporation; SETH)
18 RAVIN, an individual,
19)
20 Defendants-Appellants.
21 _____)
22
23
24
25

15 TRANSCRIPTION OF ORAL ARGUMENT
16
17 JULY 13, 2017
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REPORTED BY: RENAE E. LOPEZ, CSR NO. 12142
FILE NO.: AB07AA8

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1 principal affirmative defense was express license.

2 JUDGE GRABER: Right.

3 MR. CLEMENT: It was expressly licensed. The
4 burden's on them to point to provisions in the -- in
5 the licenses that authorize their conduct.

6 JUDGE GRABER: Okay. He's done that today.

7 MR. CLEMENT: Well, if -- if I can say, first, he
8 has to do that at the right time in the litigation.

9 JUDGE GRABER: I understand.

10 MR. CLEMENT: And he hasn't done that. Secondly,
11 even the provisions that he points to today do not
12 remotely map onto the copying and distribution that
13 they conceded below. And so I'm happy to talk about
14 specific romanettes if we'd like, but nothing in any of
15 these licenses remotely authorized them to have
16 thousands and thousands of copies on their own servers
17 and to engage in copying and distribution for the
18 copyrighted work of one client and use it on another
19 client.

20 And these are not just contract disputes. I
21 mean, again, that's another argument that they didn't
22 properly preserve.

23 JUDGE FRIEDLAND: Though your opposing counsel
24 argued, though, that the -- that the injunction and --
25 and the copyright ruling prohibits them from using

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1 the -- from making -- even -- even the licensee from
2 making a copy for a testing environment. Do you -- and
3 then by proxy, their client from helping the -- the
4 licensee from doing that. Do you dispute that it
5 prevents them from doing that?

6 MR. CLEMENT: I -- I certainly would say that
7 they can't make a testing environment on their own
8 servers. Now, you know, whether -- whether they can go
9 in, consistent with the terms of the lease, and not
10 engaging in any cross-use, and not doing it on their
11 own servers, whether they can go in and -- and assist a
12 licensed user in creating a testing environment on that
13 licensed user's servers and use it to make a fix, I
14 think that they probably can do that, with the caveat
15 that it might depend on the specific terms of the
16 specific license.

17 And to the extent there are disputes about
18 that, I mean, Mr. Perry and his law firm are involved
19 in Rimini 2 at a stage that they weren't involved in
20 Rimini 1, and those issues can be resolved. And to the
21 extent that they say that there's something very
22 specific that they can't do under the license, that
23 they say they need to do in order to provide this
24 service, I suppose we could then have a copyright
25 misuse affirmative defense that was focused on that